

106TH CONGRESS  
2D SESSION

# H. R. 5614

To amend part C of title XVIII of the Social Security Act to improve the Medicare+Choice Program.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2000

Mr. ACKERMAN introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend part C of title XVIII of the Social Security Act to improve the Medicare+Choice Program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Seniors’ Health Care  
5       Restoration Act of 2000”.

6       **SEC. 2. INCREASED PAYMENT FOR AREAS WITH TWO OR**  
7       **FEWER MEDICARE+CHOICE CONTRACTS.**

8       Section 1853 of the Social Security Act (42 U.S.C.  
9       1395w-23) is amended—

1 (1) in subsection (a)(1)(A), by striking “and  
 2 (i)” and inserting “(i), and (j)”; and

3 (2) by adding at the end the following new sub-  
 4 section:

5 “(j) INCREASED PAYMENT FOR AREAS WITH 2 OR  
 6 FEWER MEDICARE+CHOICE CONTRACTS.—For months  
 7 during 2002 and 2003, in the case of a Medicare+Choice  
 8 payment area in which there is no more than two contracts  
 9 entered into under this part as of July 1 before the begin-  
 10 ning of the year involved, the amount of the monthly pay-  
 11 ment otherwise made under this section (taking into ac-  
 12 count, if applicable, subsection (i)) shall be increased by  
 13 ½ percentage point of the total monthly payment other-  
 14 wise computed for such payment area.”.

15 **SEC. 3. INCREASE IN MINIMUM PERCENTAGE UPDATE.**

16 Section 1853(c)(1)(C)(ii) of the Social Security Act  
 17 (42 U.S.C. 1395w–23(c)(1)(C)(ii)) is amended by insert-  
 18 ing “(or 104 percent in the case of 2001, 2002, and  
 19 2003)” after “102 percent”.

20 **SEC. 4. TRANSITION TO REVISED MEDICARE+CHOICE PAY-**  
 21 **MENT RATES.**

22 (a) ANNOUNCEMENT OF REVISED  
 23 MEDICARE+CHOICE PAYMENT RATES.—Within 2 weeks  
 24 after the date of the enactment of this Act, the Secretary  
 25 of Health and Human Services shall determine, and shall

1 announce (in a manner intended to provide notice to inter-  
2 ested parties) Medicare+Choice capitation rates under  
3 section 1853 of the Social Security Act (42 U.S.C.  
4 1395w–23) for 2001, revised in accordance with the provi-  
5 sions of this Act.

6 (b) REENTRY INTO PROGRAM PERMITTED FOR  
7 MEDICARE+CHOICE PROGRAMS IN 2000.—A  
8 Medicare+Choice organization that provided notice to the  
9 Secretary of Health and Human Services as of July 3,  
10 2000, that it was terminating its contract under part C  
11 of title XVIII of the Social Security Act or was reducing  
12 the service area of a Medicare+Choice plan offered under  
13 such part shall be permitted to continue participation  
14 under such part, or to maintain the service area of such  
15 plan, for 2001 if it provides the Secretary with the infor-  
16 mation described in section 1854(a)(1) of the Social Secu-  
17 rity Act (42 U.S.C. 1395w–24(a)(1)) within 4 weeks after  
18 the date of the enactment of this Act.

19 (c) REVISED SUBMISSION OF PROPOSED PREMIUMS  
20 AND RELATED INFORMATION.—If—

21 (1) a Medicare+Choice organization provided  
22 notice to the Secretary of Health and Human Serv-  
23 ices as of July 3, 2000, that it was renewing its con-  
24 tract under part C of title XVIII of the Social Secu-

1 rity Act for all or part of the service area or areas  
 2 served under its current contract, and

3 (2) any part of the service area or areas ad-  
 4 dressed in such notice includes a county for which  
 5 the Medicare+Choice capitation rate under section  
 6 1853(c) of such Act (42 U.S.C. 1395w-23(c)) for  
 7 2001, as determined under subsection (a), is higher  
 8 than the rate previously determined for such year,  
 9 such organization shall revise its submission of the infor-  
 10 mation described in section 1854(a)(1) of the Social Secu-  
 11 rity Act (42 U.S.C. 1395w-24(a)(1)), and shall submit  
 12 such revised information to the Secretary, within 4 weeks  
 13 after the date of the enactment of this Act.

14 **SEC. 5. PROVISION OF EMERGENCY OUTPATIENT PRE-**  
 15 **SCRIPTION DRUG COVERAGE FOR MEDICARE**  
 16 **BENEFICIARIES LOSING DRUG COVERAGE**  
 17 **UNDER MEDICARE+CHOICE PLANS.**

18 (a) TEMPORARY COVERAGE OF OUTPATIENT PRE-  
 19 SCRIPTON DRUGS FOR MEDICARE BENEFICIARIES LOS-  
 20 ING PRESCRIPTION DRUG COVERAGE UNDER  
 21 MEDICARE+CHOICE PLANS.—

22 (1) IN GENERAL.—The Secretary of Health and  
 23 Human Services shall provide for coverage of out-  
 24 patient prescription drugs to eligible medicare bene-  
 25 ficiaries under this section. The Secretary shall pro-

1       vide for such coverage by entering into agreements  
2       with eligible organizations to furnish such coverage.

3           (2) TERM OF EMERGENCY COVERAGE.—The  
4       Secretary shall provide coverage of outpatient pre-  
5       scription drugs to an eligible medicare beneficiary  
6       under this section for the 24-month period beginning  
7       on the date the eligible medicare beneficiary loses  
8       coverage of outpatient prescription drugs under the  
9       Medicare+Choice plan in which the beneficiary is  
10      enrolled.

11          (3) COST-SHARING.—With respect to coverage  
12      of outpatient prescription drugs furnished under this  
13      section, benefits under this section shall not begin  
14      until the eligible medicare beneficiary has met a \$50  
15      deductible.

16          (4) PAYMENT.—The Secretary shall provide for  
17      payment for such coverage under this section from  
18      the Emergency Reserve Outpatient Prescription  
19      Drug Account established under subsection (b).

20      (b) ACCOUNT FOR EMERGENCY OUTPATIENT PRE-  
21      SCRIPTION DRUG BENEFIT IN SMI TRUST FUND.—

22          (1) ESTABLISHMENT.—There is hereby estab-  
23      lished in the Federal Supplementary Medical Insur-  
24      ance Trust Fund under section 1841 of the Social  
25      Security Act (42 U.S.C. 1395t) an expenditure ac-

count to be known as the “Emergency Reserve Outpatient Prescription Drug Account”.

(2) CREDITING OF FUNDS.—The Managing Trustee shall credit to the Emergency Reserve Outpatient Prescription Drug Account such amounts as may be deposited in the Federal Supplementary Medical Insurance Trust Fund as follows:

(A) Amounts appropriated to the account.

(B) Amounts equal to the annual outstanding balance of the Health Care Fraud and Abuse Control Account under section 1817(k) of the Social Security Act (42 U.S.C. 1395i(k)) at the end of each fiscal year that the Secretary determines may be made available to the Emergency Reserve Outpatient Prescription Drug Account.

(3) USE OF FUNDS.—Funds credited to the Outpatient Prescription Drug Account may only be used to pay for outpatient prescription drugs (and associated administrative costs) furnished under this section.

(4) CONFORMING AMENDMENT.—Section 1817(k)(3)(C) of such Act (42 U.S.C. 1395i(k)(3)(C)) is amended—

1 (A) by striking “and” at the end of clause  
 2 (iv);

3 (B) by striking the period at the end of  
 4 clause (v) and inserting “; and”; and

5 (C) by adding at the end the following new  
 6 clause:

7 “(vi) providing temporary emergency  
 8 coverage of outpatient prescription drugs  
 9 for eligible beneficiaries under section 5 of  
 10 the Seniors’ Health Care Restoration Act  
 11 of 2000.”.

12 (c) DEFINITIONS.—In this section:

13 (1) ELIGIBLE MEDICARE BENEFICIARY.—The  
 14 term “eligible medicare beneficiary” means an  
 15 individual—

16 (A) who is enrolled in a Medicare+Choice  
 17 plan under part C of title XVIII of the Social  
 18 Security Act; and

19 (B)(i) whose enrollment in such plan is  
 20 terminated or may not be renewed or whose  
 21 service area has been reduced for the next con-  
 22 tract year because the plan has been terminated  
 23 or will not be offered in such contract year; or

24 (ii) whose coverage of outpatient prescrip-  
 25 tion drugs under such plan has been termi-

1 nated, significantly reduced, or no longer pro-  
2 vides for the coverage of a particular outpatient  
3 prescription drug required.

4 (2) COVERED OUTPATIENT DRUG.—

5 (A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the term “covered outpatient  
7 drug” means any of the following products:

8 (i) A drug which may be dispensed  
9 only upon prescription, and—

10 (I) which is approved for safety  
11 and effectiveness as a prescription  
12 drug under section 505 of the Federal  
13 Food, Drug, and Cosmetic Act;

14 (II)(aa) which was commercially  
15 used or sold in the United States be-  
16 fore the date of enactment of the  
17 Drug Amendments of 1962 or which  
18 is identical, similar, or related (within  
19 the meaning of section 310.6(b)(1) of  
20 title 21 of the Code of Federal Regu-  
21 lations) to such a drug, and (bb)  
22 which has not been the subject of a  
23 final determination by the Secretary  
24 that it is a “new drug” (within the  
25 meaning of section 201(p) of the Fed-



1           eral Food, Drug, and Cosmetic Act)  
2           or an action brought by the Secretary  
3           under section 301, 302(a), or 304(a)  
4           of such Act to enforce section 502(f)  
5           or 505(a) of such Act; or

6           (III)(aa) which is described in  
7           section 107(c)(3) of the Drug Amend-  
8           ments of 1962 and for which the Sec-  
9           retary has determined there is a com-  
10          pelling justification for its medical  
11          need, or is identical, similar, or re-  
12          lated (within the meaning of section  
13          310.6(b)(1) of title 21 of the Code of  
14          Federal Regulations) to such a drug,  
15          and (bb) for which the Secretary has  
16          not issued a notice of an opportunity  
17          for a hearing under section 505(e) of  
18          the Federal Food, Drug, and Cos-  
19          metic Act on a proposed order of the  
20          Secretary to withdraw approval of an  
21          application for such drug under such  
22          section because the Secretary has de-  
23          termined that the drug is less than ef-  
24          fective for all conditions of use pre-

1 scribed, recommended, or suggested in  
2 its labeling.

3 (ii) A biological product which—

4 (I) may only be dispensed upon  
5 prescription;

6 (II) is licensed under section 351  
7 of the Public Health Service Act; and

8 (III) is produced at an establish-  
9 ment licensed under such section to  
10 produce such product.

11 (iii) Insulin approved under appro-  
12 priate Federal law.

13 (iv) A prescribed drug or biological  
14 product that would meet the requirements  
15 of clause (i) or (ii) but that is available  
16 over-the-counter in addition to being avail-  
17 able upon prescription.

18 (B) EXCLUSION.—The term “covered out-  
19 patient drug” does not include any product—

20 (i) except as provided in subparagraph  
21 (A)(iv), which may be distributed to indi-  
22 viduals without a prescription;

23 (ii) when furnished as part of, or as  
24 incident to, a diagnostic service or any  
25 other item or service for which payment

1                   may be made under title XVIII of the So-  
2                   cial Security Act; or

3                   (iii) that is a therapeutically equiva-  
4                   lent replacement for a product described in  
5                   clause (i) or (ii), as determined by the Sec-  
6                   retary.

7                   (3) ELIGIBLE ORGANIZATION.—The term “eligi-  
8                   ble organization” means any organization that the  
9                   Secretary determines to be appropriate, including—

10                  (A) pharmaceutical benefit management  
11                  companies;

12                  (B) wholesale and retail pharmacist deliv-  
13                  ery systems;

14                  (C) insurers;

15                  (D) other organizations; or

16                  (E) any combination of the entities de-  
17                  scribed in subparagraphs (A) through (D).

18                  (4) SECRETARY.—The term “Secretary” means  
19                  the Secretary of Health and Human Services.

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